

Summary of the Testimony

The Division of Professional Regulation presented Charmaine Barbieri witness to the incident of alleged abuse. She testified that she has been an employee of Americare since 1994. Americare contracts with health care facilities to provide Certified Nursing Assistants. She testified that she was working on June 11, 2000 on the 3 p.m. to 11 p.m. shift. She said that Gracie [Robertson] was doing rounds with her when they had to "change" a patient and get her out-of-bed. She testified that the Respondent put her hand over Mrs.[name] face and said "open up your damn f----legs and stop screaming. We have to change you." She indicated by gesture how the Respondent put her hand over the patient's mouth. She testified that she "froze" upon witnessing this. She said that this was the only derogatory language that she heard that day. She said that she has worked well with the Respondent in the past and that she had never had any problems working with the Respondent since that day or before that day.

During cross-examination by the pro se Respondent, Mrs. Barbieri testified that she waited until she got home that evening to call a supervisor and report the incident. She said that she didn't know the location of the telephone numbers to call other supervisors at the time. She said that she had been a pool nurse at the facility on a dozen occasions and that she didn't know the name of the on duty supervisor that day. She testified that she told another CNA at the time of the incident. That witness was not presented to the Department at the hearing.

The Respondent testified as part of her defense. She testified that she had taken care of this particular patient for a "long time." She said that she didn't abuse the patient in front of Mrs. Barbieri or at any other time in the past. She said it was the responsibility

of the witness to report any abuse to other nurses at the time of the incident because the other nurses have licenses too. "They would have done something." She said she had worked for the facility for nine years and had never been in trouble before. "I've taken good care of my residents. I've made errors but I've been a pretty good CNA. Not the best but I've been pretty good and I've never had an incident like this before," she testified. On further examination by the hearing officer in order to clarify some points, the Respondent testified that she was suspended for two months over the incident by the administrator of the facility.

The Respondent called next a character witness named Ruth Ann Leach who also is a CNA at the facility. She has been an employee there for three years. She testified that the Respondent was a good CNA and that she was trained by the Respondent. "Gracie has taught me how to take care of the patients and I respect her. I respect her work. No one has any complaints about her work," she added.

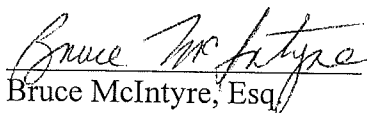
Mitigation

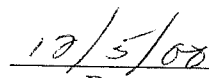
Certain findings of fact and a sanction were read into the record at the conclusion of the hearing. After reading the transcript of the case, I find that there are mitigating factors that apply to the issuance of the sanction. They are as follows:

1. The Respondent has been employed as a CNA for nine years at the nursing facility. Her record there is otherwise unblemished.
2. The Respondent brought a character witness to testify as to her reputation as a good CNA. I find that testimony to be credible.
3. The Respondent was already suspended from working for a period of time and already suffered the effects of the suspension.

FINDINGS AND ORDER

1. The Respondent was notified adequately of the nature of the charges against her and was given ample time to secure legal representation.
2. No Constitutional right to an attorney attaches to administrative hearing regarding licenses as no liberty interest is at issue.
3. The Respondent did an adequate job of representing herself pro se.
4. Good cause existed for the Division of Professional Regulation to charge the Respondent with a violation of §23-17.9-8(1)&(5) of the General Laws.
5. A preponderance of the credible evidence demonstrated that Gracie Robertson, N.A. committed patient abuse within the meaning of the law while attending to a patient in her care.
6. There are certain mitigating circumstances, which, upon reflection, are sufficient to lower the sanction, discussed in the administrative hearing of November 21, 2000.
7. The Respondent's license shall be suspended for a period of one year. This suspension shall be stayed and the Respondent shall not be required to have "down time" with regard to the suspension. She shall be on probation for a period of one year. Both the suspension and the probation shall begin January 1, 2001 and conclude December 31, 2001.
8. The Respondent shall take continuing education courses in patient care that fall in Category I, so called, involving either didactic or interactive distance learning.


Bruce McIntyre, Esq.
Hearing Officer


Date

Certification

I hereby certify that on the 5th day of December 2000 a copy of this order was sent to Gregory Madoian, Esq., Division of Professional Regulation, Department of Health, 3 Capitol Hill Providence, RI 02903 and Gracie Robertson, N.A., 100 Park Place, Apt. 309, Pawtucket, RI 02860, by regular mail.

